UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RAYMOND VEILLEUX,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 99-0148-B
	)	
PHILIP FULMER, et al.,	)	
	)	
Defendants	)	

AMENDED MEMORANDUM OF DECISION ON DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW AND MOTION TO ALTER OR AMEND VERDICT[1]

This action arises out of a series of transactions relative to the sale by Plaintiff Raymond Veilleux of his trucking company, Trans Coastal, Inc., to Defendant Ridge Trucking Company. Count I of the Complaint sought recovery of amounts due under the first of these transactions, a 1992 contract for the sale of Trans Coastal stock. Count II of the Complaint sought recovery under a March, 1994 agreement whereby Plaintiff agreed to a purchase and lease-back of the trucks owned by Ridge Trucking Company. The remaining counts related to allegations of fraudulent transfer of assets from Ridge Trucking Company to various individuals.

Jury trial in this matter concluded on May 19, 2000, with a verdict in favor of Plaintiff on Count I, and a factual finding that although the March, 1994 agreement modified the 1992 contract, it was voidable as a product of economic duress. Prior to the submission of the case to the jury, Defendant moved for judgment as a matter of

[1] Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

law, arguing the unavailability of the claim of economic duress on these facts. Fed.R.Civ.P. 50. I permitted the jury to consider the factual issue of duress, but specifically reserved ruling on the question whether Plaintiff's delay in repudiating the 1994 agreement amounted to a ratification of that agreement as a matter of law such that the claim of economic duress was unavailable. The Clerk was directed not to enter judgment on the verdict pending full briefing and a resolution of the issue. (Docket No. 34).

After the jury's verdict, Defendants also filed a Motion to Alter or Amend the Verdict. Specifically, Defendants sought amendment of the damages award for breach of the 1994 agreement on the grounds that the award did not conform to the evidence at trial. In addition, they sought an order striking any award of interest on the amount due under the 1994 contract, as the contract itself provided for no interest on the loan at issue. [2] (Docket No. 37).

Both parties have now fully briefed these questions. I now conclude that Plaintiff did not timely repudiate the 1994 contract, and may not now avoid it on the grounds of duress. I further find that the jury award is appropriately modified to reflect this conclusion.

Plaintiff asserts that the "duress under which Plaintiff was attempting to do business continued unabated until after July, 1995 when Defendant itself breached whatever agreements were in effect between the parties." Pltf. Memo. at 14. Plaintiff

[2] The Motion to Alter or Amend Jury Verdict references Federal Rule of Civil Procedure 59(e), which permits motions to alter or amend judgments. In light of the Court's order that no judgment enter pending the resolution of the Rule 50 Motion, there is as yet no "judgment" to alter. The Court sees no reason to delay addressing the Motion to Alter on the basis of this procedural irregularity.

does not explain why, however, he did not "'unequivocally declare his intent'" to repudiate the contract prior to December, 1999, when he first asserted his duress claim in his deposition. *Deren v. Digital Equip. Corp.*, 61 F.3d 1, 3 n.2 (1st Cir. 1995) (quoting *Taylor v. Gordon Flesch Co.*, 793 F.2d 858, 864 (7th Cir. 1986)). The Court is satisfied that Plaintiff's silence during the more than four year period prior to his claim of duress amounted to ratification of the 1994 agreement as a matter of law. *See In re Boston Shipyard Corp.*, 886 F.2d 451, 455 (1st Cir. 1989) (a party ratifies an agreement by, among other things, remaining silent after he could have repudiated it) (citing *United States v. McBride*, 571 F. Supp. 596 (S.D. Tex. 1983)); *see also, Fuller v. Roberts*, 35 Fla. 110, 120 (Fla. 1895) (a party cannot benefit from a contract and then attempt to repudiate it as entered into under duress).[3] Accordingly, the Motion for Judgment as a Matter of Law on Count I of the Complaint is hereby GRANTED. The jury's verdict in favor of Plaintiff in the amount of $275,000 is hereby STRICKEN.

The final issue is the question whether the jury verdict should be altered or amended to conform to the evidence and/or the Court's instructions regarding damages. The Court concludes that it should be amended as follows.

First, Defendants assert that Plaintiff's testimony regarding the balance due on the $120,000 note leads to the conclusion that the amount remaining due on that note is $44,635.09. Plaintiff has directed the Court to evidence that, viewed in the light most

[3] Once again, it is not necessary for the Court to resolve the question whether Maine or Florida law applies to the contracts at issue in this case. The Maine Law Court has not yet adopted the doctrine of economic duress. *City of Portland v. Gemini Concerts, Inc.*, 481 A.2d 180, 183 (Me. 1984). The parties apparently agree, however, that if it were adopted in Maine it would resemble the doctrine as it has developed in other states within this Circuit. Although the law in Florida regarding economic duress is not well developed, it is unlikely that it would differ in any material respect from the particulars of economic duress as it is outlined in those First Circuit cases.

favorable to Plaintiff, results in a figure of $46,017.31. The Court is satisfied that the evidence at trial does not support the amounted awarded on the note. The jury's award of $73,891 is hereby MODIFIED to $46,017.31.

Second, in light of the jury's finding that the 1994 agreement modified the 1992 contract, and the Court's conclusion that Plaintiff failed to timely repudiate the 1994 agreement, the terms of the 1994 agreement must prevail. Accordingly, the $46,017.31 due on the note is properly calculated without interest, as provided in the 1994 agreement.

Finally, Plaintiff concedes that the jury was properly instructed that they could award only the lesser of either (a) the amount due to Plaintiff under the operative contract, or (b) the amount due to Plaintiff on his claim for fraudulent transfer. The jury's award on Plaintiff's fraudulent transfer claim, even if it were modified to $85,000 as Defendants request, is larger than the amount due on the note and is therefore STRICKEN.

Conclusion

Defendant Ridge Trucking Company's Motion for Judgment as a Matter of Law on Count I of the Complaint is hereby GRANTED. Defendants' Motion to Alter or Amend Verdict is hereby GRANTED IN PART. Judgment shall enter in favor of Plaintiff as against Defendants on the remainder of Plaintiff's Complaint in the total amount of $46,017.31.

SO ORDERED.

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Margaret J. Kravchuk
United States Magistrate Judge

Dated: June 19, 2000

CLOSED STNDRD

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 99-CV-148

VEILLEUX v. FULMER, et al Filed: 06/09/99
Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK ury demand: Plaintiff
Demand: $0,000 Nature of Suit: 190
Lead Docket: None Jurisdiction: Diversity
Dkt # in Kennebec Superior : is CV-99-89

Cause: 28:1441 Notice of Removal-Breach of Contract

RAYMOND VEILLEUX plaintiff	WILLIAM D. ROBITZEK 784-3576 [COR LD NTC] BERMAN & SIMMONS, P.A. P. O. BOX 961 LEWISTON, ME 04243-0961 784-3576
v.	
PHILIP FULMER defendant	MICHAEL J. SCHMIDT, ESQ. [COR LD NTC] WHEELER & AREY, P.A. 27 TEMPLE STREET P. O. BOX 376 WATERVILLE, ME 04901 873-7771
CARROLL FULMER defendant	MICHAEL J. SCHMIDT, ESQ. (See above)

	[COR LD NTC]
RIDGE TRUCKING CORP defendant	MICHAEL J. SCHMIDT, ESQ. (See above) [COR LD NTC]
CARROLL FULMER CO INC defendant	MICHAEL J. SCHMIDT, ESQ. (See above) [COR LD NTC]
CARROLL FULMER PAYROLL INC defendant	MICHAEL J. SCHMIDT, ESQ. (See above) [COR LD NTC]